

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Sundowner Inn LLC, a California
Limited Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Sundowner Inn LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Sundowner Inn LLC owned the real property located at or about 504 Ross Dr., Sunnyvale, California, between February 2021 and December 2021.

1 3. Defendant Sundowner Inn LLC owns the real property located at or
2 about 504 Ross Dr., Sunnyvale, California, currently.

3 4. Defendant Sundowner Inn LLC owned Days Inn located at or about 504
4 Ross Dr., Sunnyvale, California, between February 2021 and December
5 2021.

6 5. Defendant Sundowner Inn LLC owns Days Inn (“Motel”) located at or
7 about 504 Ross Dr., Sunnyvale, California, currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein is
13 responsible in some capacity for the events herein alleged, or is a necessary
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
15 the true names, capacities, connections, and responsibilities of the Defendants
16 are ascertained.

17
18 **JURISDICTION & VENUE:**

19 7. The Court has subject matter jurisdiction over the action pursuant to 28
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 8. Pursuant to supplemental jurisdiction, an attendant and related cause
23 of action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California’s Unruh Civil Rights
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
27 founded on the fact that the real property which is the subject of this action is
28 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Motel in February 2021, October 2021, November 2021, and December 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws.

11. The Motel is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible guestrooms in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. The Motel provides guestrooms to its customers but fails to provide wheelchair accessible guestrooms.

14. A few problems that plaintiff encountered was that the entrance at the guestroom required plaintiff to navigate a threshold of about two inches in height. In fact, the two guestrooms that he looked at had thresholds of about two inches in height. Additionally, the peep hole, security chain lock, rod for hanging clothes, iron and restroom mirror were too high. Finally, the plumbing underneath the guestroom restroom sink was not properly wrapped to protect against burning contact.

15. Plaintiff believes that there are other features of the guestrooms that likely fail to comply with the ADA Standards and seeks to have fully compliant guestrooms for wheelchair users.

16. On information and belief, the defendants currently fail to provide wheelchair accessible guestrooms.

17. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible transaction counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

18. The Motel provides transaction counters to its customers but fails to

1 provide wheelchair accessible transaction counters.

2 19. One problem that plaintiff encountered was that the transaction
3 counter was too high. There was no counter that was 36 inches or less in height
4 that plaintiff could use for his transactions.

5 20. Plaintiff believes that there are other features of the transaction
6 counters that likely fail to comply with the ADA Standards and seeks to have
7 fully compliant transaction counters for wheelchair users.

8 21. On information and belief, the defendants currently fail to provide
9 wheelchair accessible transaction counters.

10 22. The failure to provide accessible facilities created difficulty and
11 discomfort for the Plaintiff.

12 23. These barriers relate to and impact the plaintiff's disability. Plaintiff
13 personally encountered these barriers.

14 24. As a wheelchair user, the plaintiff benefits from and is entitled to use
15 wheelchair accessible facilities. By failing to provide accessible facilities, the
16 defendants denied the plaintiff full and equal access.

17 25. The defendants have failed to maintain in working and useable
18 conditions those features required to provide ready access to persons with
19 disabilities.

20 26. The barriers identified above are easily removed without much
21 difficulty or expense. They are the types of barriers identified by the
22 Department of Justice as presumably readily achievable to remove and, in fact,
23 these barriers are readily achievable to remove. Moreover, there are numerous
24 alternative accommodations that could be made to provide a greater level of
25 access if complete removal were not achievable.

26 27. Plaintiff will return to the Motel to avail himself of its goods or services
27 and to determine compliance with the disability access laws once it is
28 represented to him that the Motel and its facilities are accessible. Plaintiff is

1 currently deterred from doing so because of his knowledge of the existing
 2 barriers and his uncertainty about the existence of yet other barriers on the
 3 site. If the barriers are not removed, the plaintiff will face unlawful and
 4 discriminatory barriers again.

5 28. Given the obvious and blatant nature of the barriers and violations
 6 alleged herein, the plaintiff alleges, on information and belief, that there are
 7 other violations and barriers on the site that relate to his disability. Plaintiff will
 8 amend the complaint, to provide proper notice regarding the scope of this
 9 lawsuit, once he conducts a site inspection. However, please be on notice that
 10 the plaintiff seeks to have all barriers related to his disability remedied. See
 11 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 12 encounters one barrier at a site, he can sue to have all barriers that relate to his
 13 disability removed regardless of whether he personally encountered them).
 14

15 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 16 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 17 Defendants.) (42 U.S.C. section 12101, et seq.)

18 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 19 again herein, the allegations contained in all prior paragraphs of this
 20 complaint.

21 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 22 privileges, advantages, accommodations, facilities, goods and services of any
 23 place of public accommodation is offered on a full and equal basis by anyone
 24 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 25 § 12182(a). Discrimination is defined, inter alia, as follows:

- 26 a. A failure to make reasonable modifications in policies, practices,
 27 or procedures, when such modifications are necessary to afford
 28 goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the
 2 accommodation would work a fundamental alteration of those
 3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is
 5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 6 defined by reference to the ADA Standards.

7 c. A failure to make alterations in such a manner that, to the
 8 maximum extent feasible, the altered portions of the facility are
 9 readily accessible to and usable by individuals with disabilities,
 10 including individuals who use wheelchairs or to ensure that, to the
 11 maximum extent feasible, the path of travel to the altered area and
 12 the bathrooms, telephones, and drinking fountains serving the
 13 altered area, are readily accessible to and usable by individuals
 14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 31. When a business provides guestrooms, it must provide accessible
 16 guestrooms.

17 32. Here, accessible guestrooms have not been provided in conformance
 18 with the ADA Standards.

19 33. When a business provides transaction counters, it must provide
 20 accessible transaction counters.

21 34. Here, accessible transaction counters have not been provided in
 22 conformance with the ADA Standards.

23 35. The Safe Harbor provisions of the 2010 Standards are not applicable
 24 here because the conditions challenged in this lawsuit do not comply with the
 25 1991 Standards.

26 36. A public accommodation must maintain in operable working condition
 27 those features of its facilities and equipment that are required to be readily
 28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

1 37. Here, the failure to ensure that the accessible facilities were available
2 and ready to be used by the plaintiff is a violation of the law.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
6 Code § 51-53.)

7 38. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
10 that persons with disabilities are entitled to full and equal accommodations,
11 advantages, facilities, privileges, or services in all business establishment of
12 every kind whatsoever within the jurisdiction of the State of California. Cal.
13 Civ. Code § 51(b).

14 39. The Unruh Act provides that a violation of the ADA is a violation of the
15 Unruh Act. Cal. Civ. Code, § 51(f).

16 40. Defendants’ acts and omissions, as herein alleged, have violated the
17 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
18 rights to full and equal use of the accommodations, advantages, facilities,
19 privileges, or services offered.

20 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
21 discomfort or embarrassment for the plaintiff, the defendants are also each
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
23 (c).)

24 42. Although the plaintiff encountered frustration and difficulty by facing
25 discriminatory barriers, even manifesting itself with minor and fleeting
26 physical symptoms, the plaintiff does not value this very modest physical
27 personal injury greater than the amount of the statutory damages.
28

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: January 26, 2022

CENTER FOR DISABILITY ACCESS

By: _____



Amanda Seabock, Esq.
Attorney for plaintiff